Richardson Brothers South, a Division of Richardson Brothers Company *and* Furniture Workers Division, I.U.E., Local 282, AFL–CIO. Cases 26–CA–14655, 26–CA–14846, 26–CA–15107, and 26–RC–7387

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On November 30, 1992, Administrative Law Judge Robert T. Wallace issued the attached decision and errata dated January 14, 1993, which has been incorporated into the judge's decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

We agree with the judge's conclusion that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to give union activist Rawls an opportunity to return to work. In so doing we note that although finding that Rawls had indeed quit his employment on the night of the election, the judge concluded that when Rawls called to get his job back the Respondent would have overlooked his emotionally inspired resignation, as it had in the past with other employees, absent his activity on behalf of the Union. In agreeing with the judge, we do not rely on the judge's alternative theory that the Respondent may have exercised unwarranted haste in filling Rawls' position. Instead, we rely on the judge's finding that the Respondent had not in fact replaced Rawls by the time he called on Monday morning to ask for his job back. In this regard, the judge effectively rejected as pretextual the Respondent's contention that an applicant for Rawls' job happened to be on the premises Monday morning, was hired before Rawls' telephone call, and yet was then told to leave and report for work the next day. Thus, particularly in light of the judge's rejection of the Respondent's stated explanation for refusing to rehire Rawls when he called on Monday, the finding that the Respondent's true motive was an unlawful one is warranted. See *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966).

Additionally, we note that the judge's analysis is fully consistent with *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1966), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). In this regard, the General Counsel carried his burden of proof in putting forth a prima facie case of unlawful motivation by establishing, inter alia: (1) Rawls was a known union activist; (2) the Respondent's union animus based, inter alia, on numerous other violations of the Act, including threats of plant closure and a threatened refusal to bargain and other violations of Section 8(a)(1), (3), and (4); (3) the Respondent's discriminatory treatment of Rawls in comparison to other employees' emotionally inspired resignations in the past; and (4) the Respondent's lack of a plausible lawful motive for failing to allow Rawls to return to work. (See *Heritage Manor Convalescent Center*, 269 NLRB 408, 413 (1984), where in determining whether the General Counsel met his burden of establishing a prima facie case of unlawful motivation, the Board considered, inter alia, whether the Respondent's explanation was truthful.) In light of the judge's further rejection of the Respondent's proffered reason for its action, the Respondent clearly failed to carry its burden of showing that it would have taken the same action with respect to Rawls absent his union activity. In this regard, we note that the judge was warranted in discrediting the testimony of Plant Superintendent Koenig regarding the hiring of Tony Burt as Rawls' replacement, given the inconsistency of the documentary evidence with Koenig's testimony and the failure of the Respondent to call as witnesses either Burt or anyone else who could explain the discrepancies in the documents. Therefore, the inference of unlawful motive stands. See, e.g., *Bardaville Electric*, 309 NLRB 337 fn. 3 (1992).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Richardson Brothers South, a Division of Richardson Brothers Company, Winona, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Margaret Brakebusch, Esq., for the General Counsel.
Kevin J. Kinney, Esq. (Krukowski & Costello, S.C.), of Milwaukee, Wisconsin, for the Respondent Company.
Ida Leachman, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge. This case was tried in Winona and Grenada, Mississippi, on March 24–27 and April 14, 1992. The original charges in Cases 26–CA–14655 and 26–CA–14846 were filed on Au-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

gust 21 and December 19, 1991,[1] respectively; and the complaints issued thereon, together with factual issues presented in election Case 26–RC–7387, were the subject of a consolidated complaint issued on January 24, 1992.

Subsequent to trial, the Union on June 4, 1992, expressed a desire to proceed to another election at the earliest possible time and, to eliminate any bar thereto, moved to withdraw its: (1) objections and challenges to the election held on August 16, (2) request for issuance of a bargaining order, and (3) charges of unlawful unilateral actions by the Company. In my Order dated June 26, 1992, I granted the unopposed motion, dismissed paragraphs 30 through 39 and paragraph 41 of the consolidated complaint, and authorized an election notwithstanding a remaining alleged discharge in violation of Section 8(a)(3) as well as numerous alleged independent violations of Section 8(a)(1) of the National Labor Relations Act. The Order elicited no objections.

Pursuant to a new charge filed on June 17, 1992, an additional complaint issued in Case 26–CA–15107 on July 27, 1992. Therein, the Respondent is alleged to have discharged an employee in violation of Section 8(a)(3) and (4) and to have issued warnings to seven others in violation of Section 8(a)(3). By order dated August 10, I granted a motion of the General Counsel for reopening and consolidation. Trial of the new issues was held on September 22–23, 1992, at Winona.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs and supplemental briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT AND ANALYSIS

I. JURISDICTION

The Respondent, a corporation, produces furniture at its facility in Winona, Mississippi, where it annually purchases and receives materials valued in excess of $50,000 directly from points outside the State of Mississippi. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. BACKGROUND

The Respondent's original plant is in Sheboygan Falls, Wisconsin; and another local of the Union represents employees there, having won that right after a hotly contested campaign extending over 3 years. On June 1, it began operations in Winona, having purchased facilities from a local concern, Whitaker Furniture Company. The Union promptly began a campaign to organize the Winona plant and that effort culminated in an election on August 16 which the Union lost by a close margin. At all pertinent times, Richard Udouj was in overall charge of operations at Winona as president of that division. Under him, in turn, were Plant Manager Marion Gillis and Plant Superintendent Joseph Koenig. As of August 16, approximately 51 hourly workers were employed there.

[1] All dates are in 1991 unless otherwise indicated.

III. CONSOLIDATED COMPLAINT

Paragraphs 5 and 15, Surveillance. The Union scheduled its first organizational meeting for June 25 at a local motel shortly after the 3:30 p.m. plant closing time. Earlier that day, Koenig saw leadman Jerome Lindley in the front office area and asked whether he knew of the meeting. When Lindley said ''No,'' Koenig volunteered that he and leadman Timothy Parrish ''were thinking about going out there and see who all is there.''

At about 4 p.m. Koenig, with Parrish driving, rode into the motel parking area in a white company-owned pickup truck. They were seen by employee William Ford who was standing on the sidewalk outside the meeting room smoking and talking with another employee, R. L. Flowers. He observed them cruising through the parking lot and they appeared to be looking at tag numbers on parked cars. Employee Tony Richardson also was outside. On seeing Koenig and Parrish, he immediately retreated inside to avoid being recognized.[2]

On the following day, Koenig visited Lindley at his workplace and told him that he and Parrish had indeed gone to the site of the union meeting; and, in response to Lindley's question: ''Were there many people there?'' he replied: ''There was quite a few.'' Also on that day in the supervisors' breakroom and in the presence of Gillis and Koenig, Parrish talked about the meeting to hourly employee Jerry Woods and told him he knew who was there.

Parrish did not testify. For his part, Koenig concedes to being in the motel area at the time in question but claims his presence was accidental. He explains that he and Parrish were on their way to a ''beer joint'' a few miles down the road from the motel, that Parrish suddenly veered into the motel area on seeing employees there, and that Koenig immediately realized that this was the place where the rumored meeting was being held. He states that he yelled at Parrish telling him to back up and get the hell out of there, that they were there no more than 30 seconds, and that he was so ''ticked'' by Parrish's blunder that he went directly home without going to the beer joint. He denies making the remarks attributed to him by Lindley.

I credit Lindley and Ford. They continue to be employed by the Respondent and testified at some risk to themselves; and they gave their accounts with apparent candor.[3] Accord-

[2] Another employee, Robert Rawls, claims he saw Koenig peeping around a corner of the motel while bending down with a pad and pencil in hand and Parrish standing over him grinning. The employee who assertedly called his attention to the scene, Curtis Blake, did not testify.

[3] The credibility of the Respondent's witnesses was not enhanced by disparities and improbabilities in testimony on this matter. Koenig states that he heard numerous ''rumblings'' of union activity 2 or 3 days prior to June 25, including a ''rumor'' there was to be a union meeting, and that he shared his information with Gillis. However, he denies having had prior knowledge of the time and place of the meeting; and he claims not to have advised Udouj of rumored union activity until the morning of June 26 when he went with Gillis to Udouj's office and reported his ''accidental'' presence at the motel. Gillis claims he did not learn of the June 25 meeting until ''around'' July 1. For his part, Udouj states that he discussed the meeting at a gathering of supervisors in Koenig's office on June 26. He does not mention any report of intrusion being made by Koenig and claims that ''unfortunately'' the supervisors were unable to tell him how many employees attended. He promptly called the owners

Continued

ingly, I find that Koenig and Parrish went to the motel area to determine how many employees attended the meeting and also to convey to attendees that management was aware of their presence. Such conduct tends to inhibit employees in supporting unionization and thereby constitutes unlawful surveillance, as alleged in paragraph 7 of the complaint. See *Tartan Marine Co*., 247 NLRB 646 (1980).

Further, Parrish's comment to Woods on the day after the meeting was intimidating in that it conveyed an impression of surveillance; and since Parrish was a leadman and known to have accompanied Koenig to the motel, employees reasonably could view him as an agent of management, and this regardless of whether he was a statutory supervisor. I find the incident to be a separate violation, as alleged in paragraph 15 of the complaint.

Paragraph 8, Interrogation, Promise of Benefits. According to employee Robert Rawls, the former owner of the plant (Whitaker President Robert Thompson) appeared at Rawls' work station on June 26 and asked ''what is going on here?'' When Rawls inquired as to what he meant, Thompson replied: ''What is this union talk out here?'' Then, to avoid plant noises, Thompson suggested that he and Rawls go into the supervisors' office. There, Thompson again inquired: ''Well, what is this I hear about a union?'' Rawls explained that the employees were trying to organize to get better wages and benefits. Thompson responded by asking: ''Well, haven't I treated you fair? Why didn't you come and talk to me?'' When Rawls explained that the employees were frustrated, Thompson asked if there was anything he could do to stop unionization. When Rawls seemed dubious, Thompson inquired as to what should be done ''to get this thing turned around?'' Without waiting for an answer, he then asked if Rawls was willing to talk to Manager Gillis. When Rawls hesitated, Thompson phoned Gillis and said: ''Marion, I'm going to bring him up.'' When they arrived at Gillis' office, Thompson departed. There is no allegation that the ensuing conversation between Gillis and Rawls was unlawful.

Rawls' account is not contradicted since Thompson did not testify. I credit Rawls and conclude that the conversation involved unlawful interrogation, as alleged in paragraph 8(a) of the complaint. Through its surveillance on June 25, I infer that the Respondent was aware that Rawls had attended the union meeting. I also infer from Thompson's inquiry to Gillis: ''Marion, I'm going to bring *him* up? [emphasis added],'' that Gillis commissioned Thompson to enlist Rawls in a counterunion campaign. In these circumstances, Thompson's questions and accompanying invocation of Gillis were inherently coercive and unlawful as alleged in paragraph 8(a). There is no evidence that the conversation also involved promises of increased wages and benefits and, accordingly, paragraph 8(b) will be dismissed.

Paragraphs 9 and 10, Promises. Paragraph 9 alleges that Gillis from early July to just after the election on August 16 promised an employee wage increases in return for rejecting the Union. The allegation derives from Rawls' statement that Gillis came by his work station ''basically everyday'' to offer him raises if he would ''go anti-union.'' The statement is too lacking in specifics for a finding to be made thereon. A similar conclusion applies to Rawls' claim that Gillis at an unspecified time offered him an hourly rate increase of 50 cents. Gillis denies having offered Rawls any increases during the campaign.[4] Paragraph 9 will be dismissed.

Rawls also claims that President Udouj often came to his work station trying to change his mind about the Union and that on July 9 he whispered into his ear: ''There's a supervisor's job coming open . . . put in for it and you'll get it.'' Also he asserts: ''I think, at one point, you know, he offered me a 25-cent raise, 75, it goes up.'' Here, too, I see no reason for crediting Rawls' testimony over Udouj's denial and, accordingly, paragraph 10 will be dismissed.

Paragraphs 11 and 12, Promises and Threats. Gillis is alleged in early July to have promised an employee a wage increase if unionization was rejected and to have threatened an employee with delay in wage increases if the Union was voted in. The only testimony in this regard was provided by hourly employee Woods. He states that after President Udouj told the assembled employees on June 10 there would be no raises until at least August or September, he went to Gillis' office and complained. He claims Gillis, after assuring him that there had been plans to raise wages and showing him a schedule of increases, told him that the Union's petition for an election tied their hands and stopped everything. For his part, Gillis admits showing Woods a schedule of increases on June 10 or 11 but only as something he and Koenig had intended to recommend to the new owners. He denies making any reference to the Union stating he had not heard anything about it at that time.

I find it hard to believe that Woods refrained from complaining about Udouj's statement until on or after June 28 when the union petition for an election was filed; and since there is no evidence of any union activity at or around the time (June 10 or 11) when Woods probably complained to Gillis, the allegations in paragraph 11 are unfounded and will be dismissed.

Paragraph 12 contains the same allegations as in paragraph 11 except that Koenig is cited instead of Gillis as the wrongdoer. Here, too, the only testimony was supplied by Woods,[5] who states that sometime during the campaign Koenig told him he couldn't promise anything but that if the Union was voted down ''good things would happen.'' Even assuming the latter comment was made, it is too vague to rise to the level of an unlawful promise of benefits. *National Micronetics*, 277 NLRB 993 (1985). The allegations will be dismissed.

Paragraphs 13 and 18, Soliciting Grievances, Promises, Threat. Tom Dulin, George Harris, and Tom Tardy are all

in Sheboygan Falls and advised them of the union activity, and set up a meeting with them in Memphis on July 10 to counter that development.

[4] In March, while the plant was still being operated by the former owner, Gillis recommended Rawls for a 50-cent increase. Rawls was then given a 25-cent raise and promised the remainder at a later (indefinite) time.

[5] Leadman Lindley testified that immediately after Udouj's ''no-raises'' speech on June 10, Koenig invited him into Gillis' office and showed him the same schedule of proposed increases referred to by witness Woods. Lindley goes on to say that sometime after the campaign began Koenig told him that the schedule was ''frozen and nobody gets nothing until this is over with.'' There is no credible evidence that the Respondent adopted the schedule before the campaign began or later promised to implement it. Lindley's account appears contrived and I decline to credit it. Indeed, it is not even mentioned in the General Counsel's argument relative to par. 12 of the complaint.

members of the Economic Development Council for the county in which Winona is located. One of their principal functions is to attract industry; and prior to the June 1 takeover, they had met with the Respondent's owners (Joseph Richardson II and III[6]) to persuade them to buy the Winona plant. They are alleged in paragraph 13 of the complaint to have acted as the Respondent's agents on July 10 in soliciting employee complaints and grievances, promising them increased wages/benefits and improved terms and conditions of employment.

Sometime during the first week of July, a former principal of the local high school phoned Rawls at home and asked if he'd meet with Dulin, Harris, and Tardy within the hour ''about my union activities.'' Rawls agreed but, wary of talking to them alone, brought along another union supporter, employee Norman Small. The meeting lasted about 20 or 30 minutes and amounted to a lecture on how real economic development was dependent on having a union-free environment in the county.

About an hour before the 3:30 p.m. quitting time on July 10, Manager Gillis went to Rawls at his work station, handed him a memo containing a phone number, a name (Tom Dulin), and the message ''call at 3:30,'' and told him to make the call right away using a phone in the supervisors' office. When he dialed the number, Rawls reached Dulin who asked him to come to the high school to again meet with members of the Economic Council. After Rawls pointed out that he was working, Dulin inquired: ''What if I can get you off right now?'' Rawls answered: ''Fine.''

At about that time, leadman Lindley was in Gillis' office checking on an order. Koenig entered and told Gillis that ''George Harris just called me and wants to meet with Robert Rawls and R. L. Flowers.'' Gillis replied that only Udouj could authorize them ''to go talk to him,'' and when Koenig asked: ''Well do you want me to call him [Udouj]?'' Gillis replied ''Yeah.'' Koenig left the office. He returned several minutes later and told Gillis that Udouj approved, whereupon Gillis told him to let them go. Koenig then asked if he should tell them to punch out. Gillis replied: ''No, let them go on the clock.''

Shortly thereafter, Koenig went to Rawls' work station and told him Gillis had approved his going ''to the meeting.'' Rawls asked if he would be paid for the remainder of the day and if Flowers also could go. Koenig replied yes to both questions. They left immediately and were paid for a full day.

At the high school they met with Dulin, Harris, and Tardy. Harris opened the meeting and did most of the talking. He asked Rawls and Flowers what it would take to avoid unionization. After mentioning a number of employee concerns, Rawls asked for a 50-cent raise for everyone, reduction of their $30-per-week payment for health insurance, and a holiday schedule comparable to the 9 days allowed in the Respondent's contract with its unionized workers in Sheboygan Falls. He also urged appointment of a black supervisor. At one point, after Rawls questioned whether employees really had health insurance coverage, Dulin left the room. He returned moments later to announce that the named insurer disclaimed having the Respondent as a client. After making a note to that effect, he told the employees: ''Well, what we need to do is go and talk to the Richardsons . . . and find out it they've got a legitimate insurance.'' The meeting ended with Rawls and Flowers each being given a copy of a list (in Dulin's handwriting) of benefits[7] which they would recommend for adoption by the owners Richardson in return for employees' repudiation of the Union.[8]

On leaving, Rawls and Flowers went directly to a previously scheduled union meeting and there told the approximate 25 employees present, including Woods,[9] what had happened and showed them the written proposals.

On the following day, Koenig again came to Rawls at his work station, gave him a slip of paper bearing a phone number and the name ''Dr. Tom Dulin,'' and told him to call the number. Rawls did so, and Dulin told him that the agreement had been approved. When pressed by Rawls, Dulin allowed that he had talked with President Udouj rather than the Richardsons, adding: ''I'm not suppose[d] to be telling you that I talked to Mr. Udouj, because . . . its against the law . . . but I talked to him and he said it was okay. He approved everything.'' After the conversation ended, Rawls had no further contact with any member of the Economic Council.

On July 12, employee Woods was shopping in a local hardware store and, by happenstance, Dulin was there. Woods told him he was extremely upset that the Economic Council had intruded into the organizing campaign. Dulin defended the intervention arguing that the employees hadn't given the Richardsons a fair chance, and he went on to state that ''the proposal was fair to start off with, and . . . if we accepted . . . it would come about.'' Also, he opined that ''if we did not drop this union petition Richardsons would leave . . . [as] they had nothing invested in the plant.''

At a meeting in Udouj's office on or about July 16, leadman Lindley asked Udouj about the proposals made to Rawls and Flowers by the Economic Council. Udouj told him he knew nothing of the matter.[10]

No member of the Economic Council testified.

Gillis admits giving Rawls and Flowers permission to leave the plant early for the purpose of meeting with individuals (Dulin, Harris, and Tardy) he knew to be members of that council; and he claims to have had no idea of what would be discussed at the meeting. He makes no mention of Lindley's account of the conversation overheard in Gillis' office on July 10.

Koenig claims to be the one who gave the ''call Dulin'' note to Rawls on July 10. He recalls being told by Gillis at about 3 p.m. to let Rawls and Flowers go to the high school

[6] Richardson II is chairman of the Respondent while his son Richardson III is president.

[7] The list contains five items, as follows: an immediate 10-cent raise for all hourly employees, reduction of health insurance cost to $20 per week, a new (seventh) holiday on the day before Christmas plus a possible floating holiday, profit sharing, and a commitment to fill supervisory positions from within and by blacks whenever possible.

[8] Rawls states that he ''probably'' agreed to drop the Union in return for the benefits. But he characterizes his dealing with the council as ''dilly-dallying because he viewed the entire effort as illegal.

[9] Earlier that day, Woods had observed Rawls and Flowers leaving early without punching out.

[10] Lindley was probably in error in placing the date of the meeting with Udouj on July 11. I have no reason to doubt Udouj's claim of being out of town on July 11 through 15.

right away and telling them they were to meet ''with some guy by the name of Dulin.'' He disclaims knowing then (or, indeed, at any time prior to trial) why they went to the school. Also, he denies giving any written message to Rawls on July 11 involving Dulin or that he ever spoke to Gillis about a request from Harris pertaining to Rawls and Flowers.

Udouj states that on July 10 he left Winona at about 7:30 for the Memphis airport to confer with the Richardsons about the unionization effort, that he did not return until about 4 p.m., and that he could not recall having communicated with anyone at the plant while he was away. Also, he claims to have left Winona directly from home at 6:30 on the morning of July 11 to attend a furniture show in Dallas, Texas, and that he did not return to the plant until Tuesday, July 16,[11] at which time he first learned that Gillis had allowed Rawls and Flowers to meet with members of the Economic Council on company time without loss of pay.[12] Also, on that day he found on his desk a message that a ''Dr. Tom Dulin'' wanted to talk to him. He recognized the name as being ''on the high school building,'' and so surmised Dulin was ''a man of some substance.''

When Udouj returned the call later in the day ''or sometime that week,'' Dulin asked him to meet with Harris, Tardy, and himself. Udouj agreed, and at the meeting assertedly learned for the first time about the wage/benefit proposals. In Udouj's words, he told them ''it sounds doable, I don't see anything unreasonable, although I'll have to talk to the Richardsons . . . [but he cautioned them that] our hands are tied . . . its just not possible, period.'' He states he met with them again on the next day, thanked them for their help, and told them ''this is a no-no. We can't do it.''[13]

Weighing the probabilities, I have resolved conflicts in testimony in this matter by crediting employee over management witnesses. I doubt that Gillis, during an election campaign, would have authorized two known union supporters to meet on companytime with members of the Economic Council without prior approval of Division President Udouj. I conclude that the Respondent, through Udouj, authorized the members to negotiate with a view to eliminating the threat of unionization and approved their recommendations. I further find that Respondent created conditions which reasonably led employees to believe that the council was speaking for it. *General Metal Products Co*., 164 NLRB 64 (1967). And even if that were not the case, tacit acceptance is found in its failure promptly to repudiate the handiwork of the members; and in this respect, having in mind its keen interest in the unionization effort, I have no doubt that the Respondent had early knowledge of the ''deal'' since over half its work force knew about it by 4:30 p.m. on July 10.[14]

Accordingly, I find that the Respondent, with the council members acting as its agent, unlawfully solicited grievances and promised increased benefits as alleged in paragraph 13. Also, I find that Dulin, on July 12 and acting as an apparent agent of the Respondent, unlawfully threatened plant closure unless employees abandoned the unionization effort.

Paragraph 14, Promises. According to Lindley, Rawls and R. L. Flowers were to see Udouj in his office on July 11.[15] At the last minute Rawls asked Lindley to substitute for him. The meeting focused principally on Flowers' problems in getting health insurers to pay his medical bills. Lindley claims that at one point Udouj told them ''You guys don't need a union. A union is no good for you, it never has been for anybody . . . . Let's get the union business out of the way, and we can work on getting y'all better benefits and wages.'' Flowers did not testify about the incident; and while Udouj recalls meeting with Lindley and Flowers about the latter's insurance problems, he denies making an reference to unionization or benefits at that time. Assuming the quoted statement was made, I find it too general to support a finding of unlawful promises of benefits. The allegation in paragraph 14 will be dismissed.

Paragraph 16, Threat, Statement of Futility. In this paragraph Gillis is alleged to have informed an employee in mid-July that unionization would be futile and to have threatened loss of a wage increase if the employees did not reject the Union. No specific evidence is cited in support of the allegation; and I have found none. It will be dismissed.

Paragraphs 17 and 19, Soliciting Grievances, Promises. In late July, Udouj met in the breakroom with the Respondent's six furniture finishers and their supervisor Clyde Cork. According to credited testimony of finishers Elmer Durham and Tony Richardson, the meeting lasted approximately 10 to 15 minutes and consisted principally of Udouj and Cork taking turns urging employees to voice their complaints. The common concern expressed was that the large specialized filters in spray booths had been clogged for 2 to 3 months with the result that spraying caused lacquers, sealers, and stains to splash back into their faces. Cork was aware of the problem and told Udouj that he had put in an order for replacement filters, whereupon Udouj told him to air freight the items immediately. New filters were installed within a few days.

Udouj and Cork concede that the problem of clogged filters was discussed and that replacements were promptly obtained. Udouj, however, claims that the focus of discussion was not employee complaints about safety but rather customer rejection of furniture because flecks of sandpaper or dust (''grit'') were found under the finish, and that the prompt replacement of clogged filters was intended to correct that defect. Cork did not support that claim, and neither did employees Durham and Richardson.[16]

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[11] Udouj denies having any conversation with Lindley about the Economic Council on July 11 or at any other time.

[12] Udouj assertedly made no effort to learn from Rawls, Flowers, or anyone else about what went on at the meeting, heard no rumors, and had no curiosity about the matter.

[13] During the same week, a black employee (Willie McLendon) was appointed to a newly created supervisory position.

[14] Udouj claims that during the course of a meeting with employees on July 23, he addressed a rumor that townspeople, through the Economic Council, were acting against their interests by trying to keep wages low, and that he tried to allay their concern by telling them that ''we're going to run it [the company], with no outside interference . . . the townspeople don't run the company.'' This generality falls short of a repudiation of the negotiations by council members. A similar conclusion applies to a statement ''that the Economic Development Council had no say in the running of the Winona plant'' assertedly made to employees by Chairman Richardson 1 day before the August 16 election. See *Star Kist Samoa, Inc*., 237 NLRB 238 (1978); *Cagle's Inc*., 234 NLRB 1148 (1978).

[15] See fn. 10.

[16] Contrary to the Respondent's contention on brief, Richardson did not state that Udouj made the employees aware of the grit problem at the meeting in question (Tr. 520).

The Respondent's solicitation of grievances and prompt action in redressing the filter complaints, coming as it did in the context of an organizing drive and in close proximity to a scheduled election, patently had the effect of undermining employees' efforts to act collectively and constitute unlawful conduct as alleged in paragraph 17. *Blue Grass Industries*, 287 NLRB 274 (1987).

On July 30, the personnel and safety director at the Respondent's plant in Sheboygan Falls (James Lehrke) came to Winona and spoke to the assembled employees about health insurance coverage in an effort to resolve employee misunderstandings in that regard.[17] Later in the day he spend about 2 hours walking about the plant, yellow pad in hand, talking to employees one-on-one at their work stations.

Among others, Lehrke spoke to Woods, Lindley, Curtis Flowers, and Medgar Baskin asking each whether they had any complaints. He recorded their responses and gave assurances that their concerns would be given appropriate attention. Lindley and Woods had complained about excessive heat in the plant. They also expressed resentment about having their pay period extended from 1 to 2 weeks, without notice, when the management turnover occurred in June. Lehrke promptly conveyed both concerns to Udouj.

A day or so later, Supervisor Cork and leadman Parrish approached Woods as he was clocking out for the day and invited him to ride with them. They drove to a facility—the ''Hereford Ranch,'' owned by Economic Development Council member Harris—and there obtained three large fans which they brought back and placed in the ''rough mill'' section of the plant where Woods frequently worked.[18] On August 9, employees again began to be paid on a weekly basis.

Here, too, I find unlawful solicitation of grievances and conferring of benefits, as alleged in paragraph 19. *R. Dakin & Co.*, 284 NLRB 98 (1987).

Paragraph 20, Threat of Plant Closure. According to Woods, Manager Gillis appeared at his machine on or about August 1 and told him ''I don't blame them if they pick up their shit and went back home.'' Aside from his subjective observation that Gillis was ''pretty upset . . . because it appeared that the Union was starting to gain support,'' Woods provides no detail as to what else, if anything, Gillis said at that time. Even assuming (over Gillis' denial) that the statement was made, it is too ephemeral to constitute a threat of closure. In the absence of any factual context, I am left to speculate even as to whether Gillis was referring to the Company. The allegation will be dismissed.

Paragraph 21, Promise of Raises and Threat of Closure. On August 13, 3 days before the scheduled election, Supervisor Cork asked two of his finishers (Elmer Durham and Thomas Chesteen) to accompany him. He led them to a small outbuilding, the ''Paint House,'' where he told them that without the Union their hourly rate would be increased from $4.25 to $7.25 in three increments; and he emphasized the point by making three marks on a barrel. Cork also opined that if the Union was voted in the Company might have to close down.

Chesteen did not testify. Cork denies having any conversation in the Paint House with just Durham and Chesteen present, adding (illogically and incredibly) that he never has one-on-one conversations with employees. However, he recalls being in the Paint House on an occasion when four employees (Durham and Chesteen as well as Paul Purnell and Tony Richardson) were ''wondering where they had been with [former owner] Whitaker, and where they were going with Richardson.'' He claims the conversation had nothing to do with the union campaign, that they did most of the talking, and that his role was ''mostly just an adversary.''

I credit Durham over Cork and find an unlawful inducement and threat, as alleged.

Paragraph 23(a), Threat of Termination. Also on August 13, Rawls had a conversation at his machine with Manager Gillis about who was going to win the election. He claims that Gillis, with whom he ''always had a good rapport,'' became testy and told him ''you'd better win this election. If you don't, you'll be out of here. I personally will not have anything to do with it, but you'll be gone . . . you definitely will be gone.''

On the other hand, Gillis testified that the conversation was friendly with Rawls bragging the Union would win with 85 percent of the vote and he (Gillis) venturing the result would be determined one way or the other by as few as two votes; and that they each wagered a six-pack of beer on whether Gillis' view would prevail. He denied telling Rawls he would be gone or terminated.

I accept Gillis' account. Later in his testimony, while describing what happened after the vote, Rawls digressed and volunteered a comment to Gillis who was seated in the courtroom. Rawls said:

> It was two six packs, Marion, it wasn't one, you ain't gonna weasel out of that, it was two.[19]

That comment persuades me that the conversation was friendly rather that threatening. The allegation will be dismissed.

Paragraph 25, Offer of Inducements and Benefits. Employees Curtis and Archie Flowers planned to attend a wedding on August 17 in Chattanooga, Tennessee. In order to drive to an evening wedding rehearsal there on August 16, they needed the day off and that meant they would be unable to vote in the scheduled election. Although leadman Claude Ware had approved the leave, on August 15 he asked them to go to Gillis' office and meet with Owner Joseph Richardson II. There, and with Curtis Flowers wearing a union hat, Richardson offered them a late afternoon ride to Chattanooga in his private airplane on August 16, with caviar and champagne, if they would vote in the election. Concerned about air sickness and lack of return transportation, they declined the offer and drove to the wedding as planned.

I find no violation. While Richardson undoubtedly hoped his offer would induce them to vote against the Union, it did not hinge on the election outcome; and there is no evidence it was contingent on their voting against unionization.[20] He

[17] Lehrke states that he had no responsibility for personnel/safety matters at the Winona plant during July and August.

[18] The fans were removed a few days after the August 16 election.

[19] Since the Union lost the election, Rawls, in effect, conceded that he owed Gillis two rather than one six-pack.

[20] Contrary to General Counsel's contention, Curtis Flowers did not testify that Richardson conditioned the offer on their voting

Continued

neither asked for or received promises in that regard. Indeed, the logo on Curtis Flowers' hat implied a predisposition toward the Union. And since Board elections are by secret ballot, he had no way of knowing how they would vote.

Paragraph 24, the ''24-hour Speech.'' It is here alleged that on August 15 Richardson II, in an address to assembled employees, promised a wage increase if they rejected the Union as their bargaining representative, informed them it would be futile to select the Union, and threatened plant closure if that result obtained.

The meeting lasted less than a half hour with Udouj, Lehrke, Richardson III, and Richardson II speaking in turn.

Employee testimony relative to these allegations was elicited from Rawls, Lindley, Woods, Ford, Curtis Flowers, and Tony Richardson. Rawls asserts generally that ''they'' (Udouj and the owners Richardson) offered ''raises . . . throughout the meeting'' in return for a ''No'' vote; and he claims President Udouj assured employees that rejection of the Union would mean a ''surprise'' for them on the following Monday and a raise within 10 days. Curtis Flowers and Richardson state that Richardson II told the assembled employees they would get a raise in a week or 10 days if the Union lost the election. And Ford recalls one of the Richardsons saying ''if we would give them another chance, then we all would get a small raise.'' In light of denials by the Respondent witnesses and employee lack of corroboration of each others' accounts, I decline to credit the employees.

None of the employees testified to any threat of plant closure;[21] and I find two cited excerpts from outlines of speeches given by the Richardsons[22] too vague to establish such a threat.

Concerning futility, several employees (Lindley, Woods, Tony Richardson, and Curtis Flowers) heard Richardson II say that if the Union won he would be a tough negotiator, that a contract might not be signed for years, and that in the meantime wages and benefits would be frozen at present levels.[23] For his part, Richardson did not contradict their testimony. Indeed, he confirmed and enhanced their accounts by testifying that he told them (as stated in his speech outline) it took another local of the Union 10 elections over an 11-year period to organize employees at its facility in Sheboygan Falls, that when the local finally achieved a majority the election remained inconclusive for 15 months until his voting challenges were resolved by the Board with ''NO INCREASES OR IMPROVEMENTS [emphasis his]'' in wages or benefits during that period, that negotiations for a first contract took 20 months with ''NO INCREASES OR IMPROVEMENTS [emphasis his]'' during that period, and that a total of 3 years elapsed between the election and the contract with ''NO INCREASES [in wages] OR BENEFITS [emphasis his]'' during that period. He also told them that ''if the Union wins Friday how long do you think it will take to get a contract? Look at our track record. We're not going to be in any hurry.''

Richardson's remarks convey more than an intention to engage in hard bargaining. Patently, and contrary to an obligation to bargain in good faith, he was telling employees he would adopt a regressive bargaining position in reprisal for their choosing to be represented by a union. That message, coupled with the clear implication they might have to wait years for an agreement without any interim increase in wages and benefits, unlawfully creates an aura of futility, as alleged.

Paragraphs 22, 26, and 27, Promises. The election took place in late afternoon on August 16. During the morning period, various managers and supervisors visited employees at their work stations urging them to reject the Union.

Tony Richardson recalls that the Richardsons, Udouj, Lehrke, Gillis, and Koenig came to the finishing department conveying the same message, i.e., that a ''No'' vote would ''make things happen.''

Tarryon Daniels states that Supervisor Cork came to the assembly department and told him and another employee (Kevin Stovall) that he knew ''definitely'' they would get a raise if the Union was voted out.

Employee Ford was approached at his machine in the Rough Mill by Richardson II. He claims Richardson told him that if the vote was against the Union ''things would look up for him.''

No other testimony was presented in support of the violations alleged in the cited paragraphs; and the officials involved denied making the remarks attributed to them. In light of those denials and the absence of corroboration, I decline to credit the three employees.[24] The allegations will be dismissed.

Paragraph 29, Alleged Unlawful Termination. Rawls was the first employee to wear a union hat and T-shirt at work and he openly solicited union memberships throughout the organizing campaign; and he openly claimed to be the campaign leader.

The election was held in late afternoon on August 16 and, as noted, the Union lost. About six managers and supervisors lingered in the front office. At about 6:15 p.m., the phone rang. Koenig answered. Rawls was on the other end and asked to speak to Gillis. Looking at Gillis, and with others (including Udouj) listening, Koenig said ''Rawls wants to talk to you.'' Gillis picked up the phone and Rawls in a calm voice told him ''I'm quitting because I don't want to come back to a plant where I'll be harassed.''[25] Gillis states that despite his assurance there would be no harassment, Rawls

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''against the Union.'' While verifying that such a statement appears in his prior affidavit, his actual testimony was that he understood (interpreted) the offer to be so conditioned. The distinction is emphasized by the fact that the quoted words were stricken by him at the time he read the affidavit.

[21] One of the employees (Woods) heard Richardson II say that the Company had decided to stay in Winona and had begun to invest over half a million dollars in new equipment.

[22] The cited excerpts (G.C. Br. at 25–26) are as follows: ''Don't sent us home tomorrow feeling like we've made a mistake coming down here and buying this plant''—Richardson III, R. Exh. 6—and ''We came here to grow and our future is here if we can stay nonunion''—Richardson II, R. Exh. 5.

[23] Woods also claims Richardson told them that minimum wages would be the starting point for any negotiations. There is no corroborating evidence relative to that claim and it is not credited.

[24] Even if Tony Richardson and Ford were credited, the statements cited by them are too vague to constitute unlawful promises of benefits in return for rejection of the Union.

[25] Earlier that day, as Gillis escorted Rawls, Lindley, Ford, and union organizer Robert Spann out of the plant after the election, Rawls, visibly upset about the result, turned and told Gillis ''You don't have to worry about me being back to work because I'm not going to work with a bunch of G.D. people that lied to me about how they was going to vote for the Union.''

persisted, saying ''I just don't feel I could come back and work there no more.'' Gillis hung up and told the others that Rawls had just quit.

On the following Monday the workday began as usual at 7 a.m. Rawls was absent. He called in at about 8 a.m., talked to Koenig, and told him he wished to take a day of accumulated annual leave and return the next day. Koenig, after reminding Rawls that he had quit, told him ''we've already hired someone else.'' And when Koenig suggested he might reapply, Rawls answered ''No'' and hung up.

Although Rawls denies phoning in and quitting on the Friday evening, I find that he did so. A number of employees testified he was distraught after the election and talked of resigning; and I have no reason to doubt Manager Gillis' account of the phone call, especially since it occurred while five other supervisors where present at the time. Also, Rawls did not contradict (contemporaneously or in his testimony) Koenig's statement that on the following Monday Koenig reminded Rawls that he had quit. Neither do I find the resignation was involuntary and, therefore, a constructive discharge. There is no credible showing that Rawls was harassed or threatened in any way.

But the matter does not end there. Admittedly, Rawls was a conscientious and capable worker; and his job assignment (running the glue clamp) is characterized by President Udouj as the ''heart and soul of the factory.'' In the past, the Respondent overlooked rash or emotionally inspired resignations;[26] and I am persuaded that it would have accorded similar treatment to Rawls absent his activism on behalf of the Union. In this respect, I find the Respondent's haste to hire a replacement was motivated by a desire to act before Rawls had time to reconsider.[27] Alternatively, I am not persuaded that a replacement was hired before Rawls called in on Monday morning.[28]

I conclude that by failing to give Rawls an opportunity to return to work, the Respondent discriminatorily terminated his employment on August 19 as alleged.

Paragraph 28, Coercion. On a day in October, Paul Purnell was at his machine in the finishing department wearing a union cap. Superintendent Koenig came by and, after commenting that the cap was dirty, told Purnell he needed another; and he tendered him a new one embossed with a company logo. Purnell replied, ''No. I'd rather keep the union cap.'' Koenig tried to remove the hat but couldn't because Purnell firmly grasped it. When Koenig kept ''bugging'' him, Purnell finally relinquished it and accepted the company cap. No other employee in the department was offered a company hat by Koenig around the time the incident occurred.

Koenig testified that the incident took no more than 30 seconds and that Purnell was a willing participant in the exchange of caps. He gives two reasons for offering the exchange. He claims demand for company hats exceeded supply; so he ''told people that, you know, I'll trade or whatever, but you know, I just can't give them away.'' Also, and despite his description of Purnell's cap as ''filthy,'' he explains he wanted to give the cap to Manager Gillis for his cap collection.[29]

I accept Purnell's version and find Koenig's conduct unlawful in that it coercively impinged on his right to manifest his prounion stance at an appropriate time and place and in a proper manner.

Paragraph 23(b), Threat. On March 23, 1992, employee Jerry Woods, concerned about whether he would be assessed a point under the Respondent's attendance policy for testifying under subpoena on the next day in the initial trial in this proceeding, went to the office where he was assured by Manager Gillis that his absence would be excused. Gillis availed himself of the occasion to ask Woods about any renewed organizing efforts in the plant. Woods told him he'd seen a lot of union cards circulating in the last couple of weeks. Gillis responded ''that was all right . . . [because] the company would win, and when . . . [it] won, the instigators would be gone.''

For his part, Gillis claims that earlier in the morning he had asked Woods to sing at a benefit sponsored by Gillis' wife, that in the afternoon Woods came to his office and, after saying he thought he could do so, volunteered that ''people are still signing union cards out in the plant.'' He quotes himself as responding: ''Well, I don't really care what they're doing out there. . . . When this is over with, the union will go away.''

As between the two accounts, I have credited Woods, finding it more probable. Since, in my opinion, the phrase ''instigators would be gone'' reasonably can be interpreted as saying that employees who were leading union supporters would be in jeopardy, I find that Gillis communicated an unlawful threat as alleged.

IV. ADDITIONAL COMPLAINT

As noted, the Union on June 4, 1992,[30] sought permission of the Board to remove all bars to another election; and a copy was simultaneously sent to all parties. The request was unopposed, and a grant meant that a new election did not have to await conclusion of these proceedings and could take place as early as August 17. On June 11, 1 week after the request was made, an employee (Jerry Woods) left the Company and written warnings were issued to six others;[31] and another employee (Michael Campbell) received a written

[26] According to Koenig, Ricky Mooney after quitting on a Friday to work for another company called in at 11 a.m. on the next Monday and was allowed to continue his employment. He also acknowledges that employee Curtis McPherson walked off the job in anger on one and possibly two occasions and was allowed to return.

[27] In light of President Udouj's recollection (Tr. 596) that after Rawls called in and resigned on Friday evening ''they'' (i.e., one or more of the managers/supervisors then present in the front office) said, ''We've got to have a replacement on Monday morning,'' I view as highly improbable Koenig's assertion that no effort to obtain a replacement was made during the weekend and that the individual hired just happened to appear at the plant door at 7 a.m. on Monday morning.

[28] Although Koenig claims to have hired Rawls' replacement on the spot at 7 a.m. on Monday, he offered no reason for then telling him to leave and return on Tuesday morning. Further, as Koenig makes no mention of asking the individual to sign documents, I conclude that a receipt purportedly signed by him on Monday, August 19, for an employee information and reference guide was executed later, as is admitted to be the case with other entries in R. Exh. 11.

[29] Koenig states that Gillis wore Purnell's hat around the plant later in the day ''for a few minutes.''

[30] From this point all dates are in 1992 unless otherwise indicated.

[31] Johnny Brown, Curtis Flowers, Jerome Lindley, Tony Richardson, Darrell Sizemore, and Claude Ware.

warning on the following day. Those actions are claimed to have been prompted by the Respondent's anger at the prospect of an early election and/or general antiunion animus.

The Severance. Woods was hired by a Respondent predecessor company in July 1987 and developed into a specialist in sharpening and fashioning woodcutting knives. He also became adept at operating most of the saws and machinery used in fashioning furniture; and in response to his suggestion and with 2 days' training, he began in March to sharpen carbide tip knives in-house, thereby effecting a substantial cost saving. Within a short time he had passed on his techniques to another employee (George Hill) and, on occasion, the latter performed all in-house sharpening operations on his own.

Since late 1988, beginning with the Respondent's predecessor, Woods was allowed time off as needed to work as a substitute letter carrier at a local branch of the Postal Service under an arrangement as follows: He would tell the Company, usually on short notice, of his need to serve as a substitute carrier and he agreed to, and did, make himself available on evenings and Saturdays whenever a need for his knife sharpening talents arose during any absence. He installed a telephone answering machine in his home in order to obviate any communications problems. He was never advised of any difficulties arising under the arrangement.[32]

In January, the Respondent implemented an attendance policy whereby employees were assessed points for unexcused absences or tardiness. An accumulation of 4 points over a 6-month period resulted in discipline, while 10 points meant discharge. Before the new system went into effect, Woods asked Manager Gillis whether it would alter his arrangement. After ascertaining that other employees had no objection, Gillis advised Woods that his absences for postal work would be excused.

Woods did not sign a union authorization card. Nor did he manifest, through wearing insignia or otherwise, any support for the Union. On March 24, he appeared in the courtroom to testify in this proceeding pursuant to a subpoena from the General Counsel. While waiting for the trial to begin he was seated with another employee (Mike Jones) on the company side just behind Manager Gillis and Chairman Richardson II. Both employees were manifestly nervous. Responding to the situation, Richardson II turned and offered advice: ''Well, just get up there and tell the truth and everything will be okay.'' After a brief pause, he turned again and added: ''But, your best two answers are always 'I don't know and I don't remember.'''[33] According to my assessment, Woods did not follow the latter advice but, instead, testified to the truth as he saw it in connection with at least 10 alleged acts of wrongdoing by the Company.

On at least six occasions in between March 24 and June 11 Woods asked Gillis and Superintendent Koenig for a change in his work assignments so that he could spend more time sharpening blades, thereby to remedy operators' complaints about dull knives. No significant adjustment was made.

During the 2 weeks preceding June 11, Hill did most of the sharpening because Woods was required to spend virtually all his time ''out on the floor,'' and for the immediately preceding weeks he spent on average about 32 hours of his workweek operating machines and the remaining 8 hours sharpening knives.[34]

On Thursday, June 11, Woods punched in at 7 a.m. and began to operate a machine. About 15 minutes later his supervisor (James Mooney) told him to report to the office. There he met Gillis and Koenig and the latter handed him a document faxed from the Sheboygan plant and dated June 10 reading as follows:

NOTICE

TO: ALL RBC SOUTH EMPLOYEES
FROM: JIM LEHRKE
RE HOURS OF WORK (EFFECTIVE IMMEDIATELY)

ALL EMPLOYEES ARE REQUIRED TO WORK A NORMAL SCHEDULED WORK DAY AND WEEK, WHICH WILL CONSIST OF 40 HOURS. TO START ON MONDAY.

THE COMPANY WILL SET THE TIME OF WORK SHIFTS. THE PURPOSE OF THIS IS TO TREAT ALL EMPLOYEES FAIR AND EQUAL.

Woods was the only employee affected by the notice; and there is no indication that any employee objected to his excused absences for postal service.

When Woods finished reading, Gillis told him: ''You have two options open to you. You can either quit the Post Office or quit the plant.'' After a moment of reflection,[35] Woods told them he would not choose, adding that they had to decide whether to fire him.[36] Neither Gillis nor Koenig made any audible response. Instead, they proceeded to tell him about severance pay, including an allowance for earned vacation time, and when he could pick up his checks. The meeting ended with Woods telling them he would go home and then return at 4:30 p.m. to retrieve personal belongings. Gillis agreed, stating ''Its been nice working with you . . . I'll give you a reference [if you need one].''

Woods returned at 4:30 p.m. and took the occasion to again speak to Gillis. He offered to forgo any vacation, health insurance, and all other benefits if he could continue on the job under the same arrangement as before.[37] Gillis declined stating that the matter ''was out of my hands . . . over my head . . . [and that] it wasn't my decision to make.'' Leaving to get his belongings, Woods met his supervisor, Mooney, on the plant floor. During the course of a 15-minute discussion, Mooney told him he was sorry about what happened, and he went on to tell Woods: ''You were not

[32] Woods was absent for postal work for whole or portions of days on 5 occasions during the last 3 months of 1989, 25 times in 1990, 21 in 1991, and 13 to June 11, 1992.

[33] Woods' account of this incident is not contradicted.

[34] In the absence of any countervailing data from the Respondent, these findings are based entirely on Woods' recollection.

[35] Woods then earned $5.35 an hour at the plant and $12.20 plus mileage expenses as a substitute letter carrier. Also, he had hopes of obtaining permanent status with the Postal Service in the near future.

[36] At the time, Woods had accumulated only 2-1/2 points under the Respondent's attendance policy.

[37] This credited testimony shows that Woods, far from being a dissatisfied employee intent on leaving, pleaded to retain his job, a circumstance which plainly distinguishes this case from the situation in *Pacesetter Corp*., 307 NLRB 514 (1992).

fired because of any complaint that I made against you. I was perfectly satisfied with your work.''

On the following day Woods received a letter from Gillis, dated June 11, reading as follows:

> Dear Jerry:
>
> We hope you will reconsider your position and stay with us. Your decision will need to be made in the next couple of days because we are in the process of looking for a replacement. We have plenty of work to keep you employed for 40 hours, Monday through Friday. We need someone in the knife sharpening room constantly to keep up with the demand of the plant. Please contact me if you change your mind.

Woods promptly returned to the plant, arriving at about noon. He told Gillis he was confused about the letter because he had assumed he was fired. Gillis replied by asking if Woods heard him use the words ''You're fired?'' Woods thought for a moment, answered ''No,'' and then volunteered to go back to work. Gillis said, ''No . . . you can't work here anymore.'' After telling Gillis he saw no difference between that phrase and ''you're fired,'' Woods again went home.

Gillis and Koenig state that the decision to end Woods' exception to the attendance policy was made jointly by them and Director Lehrke in a conference call on June 10 and was based on a pressing need to have someone sharpening blades full time, that there was no mention of severance pay on June 11, and that they expected him to return to work when he left the office. They claim to have been surprised when he chose to ''quit'' by going home, having assumed he would continue working at least until he accumulated 10 points under the attendance policy; but they concede that that option was not expressly mentioned on June 11. Gillis also claims he told Woods on June 11 that he needed a full-time sharpener, but Koenig did not corroborate that statement. Gillis denies having told Woods that the severance decision was not his or that it was out of his hands. He also denies having told Woods on June 12 ''you can't work here anymore.'' Instead he claims to have invited Woods to go back to work, but only if he agreed to work a regular 40-hour shift.

Three weeks elapsed before the Respondent found and hired a person with knife sharpening skills; meanwhile the knives, including those with carbide tips, were sharpened by Hill.

I find probable and credit Woods' account; and I draw the following conclusions.

The decision to sever Woods' employment was made ''over [Gillis'] head'' (i.e., at the Sheboygan Falls plant); and the ''Notice'' faxed from there announcing the end of his postal service exemption was expected to achieve severance by causing him to leave voluntarily. Nonplussed when Woods declined to choose between the only two options given him, Gillis effected the desired severance by firing him on June 11. Later that day, and fearing that the only reason given for the termination (''to treat all employees fair and equal'') would not bear scrutiny, the Respondent sent Woods a letter in which it attempted to negate the firing and supply a new reason for ending his postal service exemption, i.e., ''We need someone in the knife sharpening room constantly to keep up with the demand of the plant.''

I regard both reasons for termination as pretextual. The Respondent provides no reason why an exception agreeable to other employees in January became unfair in June. Neither does it explain (1) why it needed a full-time knife sharpener as of June 11 while during the immediately preceding several weeks it assigned Woods to other duties for well over half his worktime, and (2) why it precipitated Woods' immediate departure when, according to Gillis, no qualified knife sharpening replacement was available.

Woods' discharge occurred a few days after the Union filed its unopposed request for permission to hold a new election notwithstanding pendency of this proceeding; and approval meant that the election could take place as soon as August 17. In view of the proximity of the discharge to the Union's request, the Respondent's animus toward unionization as reflected on this record, and Chairman Richardson's probable chagrin when Woods, ignoring his advice, testified candidly in this proceeding, I conclude that the discharge was intended as retaliation for doing so and to prevent his voting for the Union in the forthcoming election; and to deter other employees from doing either or both of those things. *S & S Screw Machine Co.*, 288 NLRB 235 (1988). Accordingly, I find the discharge, as well as the change of policy relative to his absences for postal service, coercive and discriminatory in violation of Section 8(a)(1), (3), and (4) of the Act.

The Warnings. Under the Respondent's discipline policy ''less serious offenses'' (i.e., those not specified in its employee handbook as warranting immediate termination) are dealt with as follows: When oral reminders fail to remedy an offense such as maintaining a messy work area, a formal verbal warning is issued and memorialized by a written memorandum. The next two offenses lead to formal written warnings; and a fourth results in termination.

Six formal verbal warnings were issued by supervisors to as many employees on the day Woods was discharged; and another employee was given such warning on the following day.

Of those, three were for not cleaning up around cutting machines, and were issued to Jerome Lindley, Curtis Flowers, and Darrell Sizemore, respectively. As shown in an exhibit received in evidence at the earlier trial, all three had signed union authorization cards; and Lindley and Flowers were witnesses for the General Counsel during that phase of the case.

The incident for which Lindley received his warning occurred on June 10. According to his uncontradicted and credited testimony, on that day it had become impossible for him to push wood debris from the area immediately around his machine because of knee high accumulations. Normally a janitor removed the trash daily but he had not appeared for at least a day and a half.[38] Although Lindley complained about the situation to Manager Gillis at about 2 p.m., neither the latter nor Lindley's immediate supervisor (James Mooney) instructed him to remove the debris, and nothing was done to alleviate it that day. Promptly on his arrival at work

[38] Saw operators were only expected to push debris away from their machines; and they were allotted 5 minutes to do so at the end of the workday.

on June 11, Lindley's supervisor (James Mooney) handed him the warning. After reading it Lindley looked up and said, ''Man, this is bullshit!'' Looking uncomfortable, Mooney replied, ''I'm just doing what I'm told to do. They told me to write it up.''

Flowers and Sizemore also received their warnings on June 11 for alleged cleanup dereliction on June 10. Prior to June 11, no employee had ever been written up for a similar offense. While Flowers was called as a witness for the Respondent and admitted fault and Sizemore did not testify, I conclude that their warnings were for the unusual debris pileup described by Lindley and that their supervisors (who, like Mooney, did not testify) were told to write them up.

Under the Respondent's policy earplugs were required to be worn by employees only while they were actually operating machines; and it was permissible for them to remove plugs while talking to each other and supervisors on business matters in close proximity to functioning machines.

Although employees often were orally reminded to use earplugs, no one had ever been written up for failing to do so prior to June 11. On that day, Supervisor Ralph Borden issued such warnings to machine operators Claude Ware and Johnny Brown; and another on the following day to operator Michael Campbell.[39] All three employees concede that at times they they had not worn plugs while standing near functioning machines. Campbell claims that he had slipped up only one time. Ware recalled an occasion when he just forgot. Brown states that the only time he removed his plugs on June 11 was for a 2-minute period to respond to another employee's request for a pair of vise grips. Here, too, the issuing supervisor did not testify; and his written memorials do not show when the violations occurred and provide no details as to circumstances which prompted the warnings.

Tony Richardson is shown to have signed a union authorization card and he testified at the earlier trial against the interest of the Respondent as a witness for the General Counsel.

On June 5, Richardson had just cleaned his area on Supervisor Cork's instruction when an employee (Anotile Archie) from another department dumped a quantity of clean rags in a corner near his machine. Unused rags normally were stored in the ''Pump House.'' Richardson complained to Cork without result. At about 9:30 a.m. on June 11 the rags were still there and Cork again asked Richardson to clean up his area. In a reaction described by Richardson as ''flying off the handle'' and by Cork as ''hostile,'' Richardson replied, ''I will clean up my . . . area, but I'm not picking up those rags,'' and he reminded Cork of his prior complaint. Cork left the area without replying. He returned about 20 minutes later and noted that the rags were still there. Shortly thereafter an uneasy Richardson persuaded Archie to help him pick up the rags, and together they accomplished the task.

About an hour and a half later (around lunchtime) Cork escorted Richardson to the office where he gave him a written warning for having ''an attitude.'' At that time he knew that the rags had been removed. In his view Richardson simply had taken advantage of an opportunity to be disagreeable with a supervisor. He adds: ''I can't see someone getting upset over a few shop towels.'' Cork claims that neither Gillis nor Koenig instructed him to issue the warning or had prior knowledge that he had done so.

There is no indication that Richardson had been a disciplinary problem in the past. Indeed, the writeup by Cork was the first Richardson had received during his 3 years at the plant.

I find the warnings pretextual. All issued contemporaneously with Woods' discharge and involved infractions for which formal writeups theretofore had not been used. And, based on Mooney's admission, I am persuaded that he and the other issuing supervisors were acting on instructions from above. I am also persuaded that, like Woods, the employees received such discipline because the Respondent, reacting to the Union's petition and anticipating an early new election, meant to convey to its entire work force its intent to continue vigorously to oppose unionization.[40] Accordingly, I find the warnings coercive and discriminatory in violation of Section 8(a)(1) and (3), as alleged.

CONCLUSIONS OF LAW

The Respondent violated Section 8(a)(1), (3), and (4) of the Act in the particulars and for the reasons stated above, and it is not shown to have violated the Act in any other respect. Those unfair labor practices and each of them have affected, are affecting, and unless permanently restrained and enjoined will continue to affect, commerce within the meaning of Section 2(6) and (7).

Pursuant to my order dated June 26, 1992, the proceeding in Case 26–RC–7387 will be dismissed.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged employees Robert Rawls and Jerry Woods, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Because of the Respondent's numerous and overall egregious violations, demonstrating a general disregard for the employees' fundamental rights, I find it necessary to issue a broad Order requiring the Respondent to cease and desist from infringing in any manner on rights guaranteed employees by Section 7 of the Act. *Regency Manor Nursing Home*, 275 NLRB 1261 (1985); *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[41]

[39] Ware and Campbell do not appear to have had any involvement with the Union. Brown was listed in an early exhibit as having signed a union authorization card.

[40] An inference of unlawful motivation is not negated by the circumstance that two of the warned employees appear not to have manifested support for the Union. See *Northwestern Publishing Co*., 144 NLRB 1069 fn. 14 (1963), enfd. 343 F.2d 521 (7th Cir. 1965).

[41] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondent, Richardson Brothers South, a Division of Richardson Brothers Company, Winona, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for supporting Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union.

(b) Issuing disciplinary warnings to inhibit, deter, or prevent employee support for Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union.

(c) Engaging in surveillance or creating an impression of surveillance so as to inhibit, deter, or prevent union organizational efforts.

(d) Coercively interrogating any employee about their union activities or sympathies.

(e) Soliciting and promising to remedy employee grievances in order to undermine union organizational efforts.

(f) Offering, promising, or providing wage increases and benefits to employees in order to undermine union organizational efforts.

(g) Threatening plant closure, discharges, or other reprisal to inhibit, deter, or prevent employees from supporting Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union.

(h) Informing employees it would be futile to select Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union as their collective-bargaining representative.

(i) Preventing or attempting to prevent employees from wearing union hats or insignia or otherwise manifesting support for Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union at appropriate times and places and in a proper manner.

(j) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Robert Rawls and Jerry Woods immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Restore to Jerry Woods the absentee policy exemption accorded him for work performed as a substitute letter carrier for the Postal Service, thereby to enable him to continue such work as in accordance with the pattern established prior to his unlawful discharge.

(c) Rescind all adverse personnel actions issued to the above-named employees and to Johnny Brown, Michael Campbell, Curtis Flowers, Jerome Lindley, Tony Richardson. Darrell Sizemore, and Claude Ware as a result of the discriminations here found to have been practiced against them, and remove from its files any reference thereto and notify these employees, in writing, that it has done so and that the expunged material will not be used as a basis for any future personnel actions against them or made reference to in any response to any inquiry from any employer, prospective employer, employment agency, unemployment insurance office, or reference-seeker.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its plant in Winona, Mississippi, copies of the attached notice marked ''Appendix.''[42] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaints are dismissed insofar as they allege violations of the Act not specifically found; and that the proceeding in Case 26–RC–7387 is dismissed.

adopted by the Board and all objections to them shall be deemed waived for all purposes.

[42] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against you for supporting Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union.

WE WILL NOT issue disciplinary warnings to inhibit, deter, or prevent you from supporting Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union.

WE WILL NOT spy on you or give an impression of doing so in order to deter or prevent you from supporting union organizational efforts.

WE WILL NOT coercively question you about your union activities or sympathies.

WE WILL NOT inquire about grievances or promise to remedy them in order to undermine union organizational efforts.

WE WILL NOT offer, promise, or provide wage increases and benefits in order to undermine union organizational efforts.

WE WILL NOT threaten to close the plant, end your employment, or otherwise punish you in order to deter or prevent you from supporting Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union.

WE WILL NOT tell you it would be futile to select Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union as your collective-bargaining representative.

WE WILL NOT prevent or try to prevent you from wearing union hats or insignia or otherwise showing support for Furniture Workers Division, I.U.E., Local 282, AFL–CIO or any other union at appropriate times and places and in a proper manner.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Robert Rawls and Jerry Woods immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their unlawful discharges, less any net interim earnings, plus interest.

WE WILL restore to Jerry Woods the absentee policy exemption accorded him for work performed as a substitute letter carrier for the Postal Service, thereby to enable him to continue such work as in accordance with the pattern established prior to his unlawful discharge.

WE WILL rescind all adverse personnel actions issued to the above-named employees and to Johnny Brown, Michael Campbell, Curtis Flowers, Jerome Lindley, Tony Richardson, Darrell Sizemore, and Claude Ware as a result of the discriminations here found to have been practiced against them, and remove from or files any reference thereto and notify them, in writing, that we have done so and that the removed material will not be used as a basis for any future personnel actions against them or made reference to in any response to any inquiry from any employer, prospective employer, employment agency, unemployment insurance office, or reference-seeker.

RICHARDSON BROTHERS SOUTH, A DIVISION OF RICHARDSON BROTHERS COMPANY